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PRE-APPEAL BRIEF REQUEST FOR REVIEW

Docket Number (Optional)

Narlikar 3-1

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)]

on September 29, 2006

Signature Bobbette A. Blake

Typed or printed name Bobbette A. Blake

Application Number

09/731,348

Filed

December 6, 2006

First Named Inventor

Narlikar, et al.

Art Unit

2153

Examiner

Aaron N. Strange

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).
Note: No more than five (5) pages may be provided.

I am the

☐ applicant/inventor.

☐ assignee of record of the entire interest.
See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.
(Form PTO/SB/96)

☒ attorney or agent of record.
Registration number 36,597

☐ attorney or agent acting under 37 CFR 1.34.
Registration number if acting under 37 CFR 1.34 _____

Kevin M. Mason

Signature

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Typed or printed name

203-255-6560

Telephone number

September 29, 2006

Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required.
Submit multiple forms if more than one signature is required, see below*.

☐ *Total of _____ forms are submitted.

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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Narlikar 3-1

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Patent Application

5 Applicant(s): Narlikar et al.
Case: 3-1
Serial No.: 09/731,348
Filing Date: December 6, 2000
Group: 2153
10 Examiner: Aaron N. Strange

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Signature: *Robert Black* Date: September 29, 2006

Title: Method and Apparatus for Client-Side Proxy Selection

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MEMORANDUM IN SUPPORT OF
PRE-APPEAL BRIEF REQUEST FOR REVIEW

Mail Stop AF
Commissioner for Patents
20 P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

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The present invention and prior art have been summarized in the prior responses.

STATEMENT OF GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

Claims 1 through 22 are presently pending in the above-identified patent application. Claims 1-22 are rejected under 35 U.S.C. §112, first paragraph, as failing to comply with the enablement requirement. Claims 1, 3, 13, 15, and 21 are rejected under 35 U.S.C. §103(a) as being unpatentable over Braddy (United States Patent Number 6,304,967) in view of Yoakum et al. (United States Patent Number 6,421,674), claims 2, 4, 5, 14, and 16 are rejected under 35 U.S.C. §103(a) as being unpatentable over Braddy and Yoakum in further view of Gampper et al. (United States Patent Number 6,442,601), claim 6 is rejected under 35 U.S.C. §103(a) as being unpatentable over Braddy and Yoakum in further view of Smith (United States Patent Number 6,341,311), claims 7, 9-11, 17, (19), 20, and 22 are rejected under 35 U.S.C. §103(a) as being unpatentable over Yoshikawa, "Using Smart Clients to Build Scaleable Services," in view of Jordan (United States Patent Number 6,438,652), claim 12 is rejected under

35 U.S.C. §103(a) as being unpatentable over Yoshikawa in view of Jordan, in further view of Smith (United States Patent Number 6,341,311), and claims 8 and 18 are rejected under 35 U.S.C. §103(a) as being unpatentable over Yoshikawa in view of Jordan, in further view of Official Notice.

5 Formal Rejections

Claims 1-22 were rejected under 35 U.S.C. §112, first paragraph, as failing to comply with the enablement requirement. Regarding claims 1, 13, and 21, the Examiner asserts that it is apparent that the step of determining whether a given file type...is not performed at the client and the specification fails to provide support for the client performing such an operation.

10 Applicants have not alleged that the step of determining whether a given file type satisfies one or more predefined criteria based on a size of files of the given file type is performed at the client, and the claims do not require that this feature is performed by the client. Rather, the client performs the steps of (i) receiving at said client a request for said web resource; (ii) determining if said web resource is a heavy file type; and (iii) redirecting by said client said
15 web resource request to a proxy server associated with said heavy file type when it is determined that said web resource is said heavy file type. In addition, while “a given file type is determined to be said heavy file type if said given file type satisfies one or more predefined criteria based on a size of files of said given file type,” this determination **need not be** performed by the client. In fact, as recognized by the Examiner this determination can be made by another entity, and
20 recorded in a table that is provided to and accessed by the client to determine if a file type is a heavy file type (see, e.g., page 7, lines 18-25). Accessing a table that indicates whether a given file type is a heavy file type satisfies the limitation “determining if said web resource is a heavy file type” and such feature is clearly described in the Specification. In other words, the determination is made by accessing the table. The fact that the table is populated by another
25 entity does not alter the analysis.

Regarding the Examiner’s assertion that “the only reasonable interpretation of the current claim language is that all recited steps are performed at the client,” Applicants note that the step of determining if said web resource is a heavy file type is not necessarily the exact same

action as the determination that a given file type is determined to be said heavy file type; in other words, the actions are not necessarily performed by the same entity. Regarding the Examiner's assertion that, if the determination is made by accessing a table populated by another entity, the claims should be amended to accurately reflect this, Applicants note that such an amendment is not necessary to distinctly claim the subject matter which applicant regards as the invention.

Regarding claims 7, 17, and 22, the Examiner asserts that "the client merely examines a table to determine whether a domain is a heavy domain. The client itself does not determine if the traffic volume of the domain satisfies one or more predefined criteria. It merely determines if the domain appears in the proxy selection table." Again, accessing a table that indicates whether a given domain is a heavy domain satisfies the limitation "determining if said web resource request is served by a domain having a traffic volume that satisfies one or more predefined criteria" and such feature is clearly described in the Specification.

Applicants respectfully request withdrawal of the Section 112 rejections.

Independent Claims

Independent claims 1, 13, and 21 were rejected under 35 U.S.C. §103(a) as being unpatentable over Braddy in view of Yoakum et al., and claims 7, 17, and 22 were rejected under 35 U.S.C. §103(a) as being unpatentable over Yoshikawa in view of Jordan. Regarding claims 1, 13, and 21, the Examiner asserts that Braddy discloses redirecting by said client said web resource request to a server associated with said heavy file type (*citing* col. 15, line 61, to col. 16, line 3; col. 17, lines 41-52). The Examiner further asserts that a given file type is determined to be a "heavy file type if said given file type satisfies one or more predefined criteria based on a size of files" and continues to note that large MIME types such as gif, jpeg, and mpeg are significantly larger on average than html files.

The mere fact that the files *happen to be* large does not disclose or suggest an *affirmative determination* that the files are a "heavy file type." Braddy merely determines the file type and forwards the request to the appropriate server. Again, as indicated in Applicants' prior responses, Braddy does not disclose or suggest determining if said web resource is a "heavy file type" (e.g., having a file size that exceeds a predefined threshold). Rather, Braddy is

redirecting file requests based on the *capabilities* of the server. For example, files of a type “mpeg” are redirected to a video server that has *capabilities* for handling video files. The present invention, on the other hand, categorizes appropriate files as “heavy file types” to separate larger files, so that requests for smaller files are not blocked. Thus, Braddy, Gampper et al., Yoakum et al., Jordan, and Smith do not disclose or suggest “determining if said web resource is a heavy file type, wherein a given file type is determined to be said heavy file type if said given file type satisfies one or more predefined criteria based on a size of files of said given file type; and redirecting by said client said web resource request to a proxy server associated with said heavy file type *when* it is determined that said web resource is said heavy file type,” as required by claims 1, 13 and 21. The body of each of claims 1, 13 and 21 emphasize the client-side nature of the disclosed techniques.

The Examiner now alleges that the Request Broker is on the client-side, but as noted in client’s previous response, Braddy teaches that “a Filter Module 112 is a *server side* plug-in software module that handles the processing of the request.” (Col. 21, lines 14-16.) Filter Modules 112 are not servers but are components of, for example, the Request Broker 90 (see, FIG. 7) and the **Filter Modules 112 are located in the same machine (server) as the Broker Request Processor 104** (see, FIG. 7). The Examiner did not rebut this contention in the final Office Action.

The Examiner also asserts that, in the present case, the request broker requests content from local or network server computers. As would be apparent to a person of ordinary skill in the art, however, a client has a particular definition in the context of the present disclosure, and the Request Broker 90 and the Filter Modules 112 disclosed by Braddy are *not* clients as defined in the context of the present disclosure.

Independent claims claims 7, 17 and 22 were rejected under 35 U.S.C. §103(a) as being unpatentable over Yoshikawa in view of Jordan. Regarding claims 7, 17, and 22, the Examiner asserts that Yoshikawa discloses, among other things, determining if said web resource request is served by a domain having a traffic volume that satisfies one or more predefined criteria; and redirecting by said client said web request to a server associated with said domain.

Yoshikawa provides a client-side mechanism to redirect requests based on load-balancing. A “least loaded ftp server” query identifies the “number of *users* connected to the server.” See, section 3.3, page 9, 2d line below Figure 4 caption. Balancing a load based on the *number of users* does not disclose or suggest “determining if said web resource request is served by a domain having a *traffic volume* that satisfies one or more predefined criteria.” As indicated in the present specification at page 6, lines 20-22, “as used herein, a ‘heavy domain’ is defined as those domains having a predefined low threshold for *total byte traffic* and *number of requests* on the set of all domains.” (Emphasis added.)

Regarding the Examiner’s assertion that “the number of users connected to a web resource is a well known type of traffic,” Applicants note that this definition is contrary to the well known definition of “traffic” in the art, and to the definition used in the context of the present disclosure. For example, the number of users connected to a server does not directly correlate with total byte traffic or number of requests.

Thus, Yoshikawa, Gampper et al., Yoakum et al., Jordan, and Smith do not disclose or suggest determining if said web resource request is served by a domain having a traffic volume that satisfies one or more predefined criteria, as required by independent claims 7, 17, and 22. The remaining rejected dependent claims are believed allowable for at least the reasons identified above with respect to the independent claims.

If any outstanding issues remain, or if the Examiner has any further suggestions for expediting allowance of this application, the Examiner is invited to contact the undersigned at the telephone number indicated below. The Examiner’s attention to this matter is appreciated.

Respectfully submitted,



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